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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,596	01/15/2002	Lawrence J. Putz	1801	6598
24264	7590	08/22/2005	EXAMINER	
TIMOTHY J MARTIN, PC 9250 W 5TH AVENUE SUITE 200 LAKEWOOD, CO 80226			HWU, DAVIS D	
			ART UNIT	PAPER NUMBER
			3752	

DATE MAILED: 08/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.	PUTZ, LAWRENCE J.
Examiner	Art Unit
Davis D. Hwu	3752

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after **SIX (6) MONTHS** from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire **SIX (6) MONTHS** from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 08 August 2005.  
2a) This action is **FINAL**.      2b) This action is non-final.  
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-8 and 10-39 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) Claim(s) 12-30,38 and 39 is/are allowed.  
6) Claim(s) 1,4-8,10,31-33 and 35-37 is/are rejected.  
7) Claim(s) 2,3,11,22 and 34 is/are objected to.  
8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
    1. Certified copies of the priority documents have been received.  
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_.  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_.

## DETAILED ACTION

1. Applicant's amendment and arguments of August 8, 2005 are acknowledged and entered.
2. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 102***

4. Claims 1, 4, 5, 10, and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Tokunaga.

Tokunaga shows a piece of jewelry adapted to receive a quantity of a fragrance producing composition that includes a fragrance emitting substance in a carrier liquid comprising a securement member 14 adapted to releasably secure to a portion of one's body or clothing, a setting 16 supported by the securement member, and a piece of porous material 10 having sufficient porosity to permit penetration thereof by the carrier liquid and the fragrance emitting substance and including a top surface and a bottom surface opposite the top surface, the piece affixed to the setting at an orientation relative the securement member such that ambient air can flow about at least a portion of both the top and the bottom surfaces wherein the setting is a bezel as recited in claim 4.

4. Regarding claim 31, since Tokunaga shows all of the structural limitations of the device of the instant invention, the method as recited would have been obvious to one

having ordinary skill in the art in order to reuse the device with a different type of fragrance.

***Claim Rejections - 35 USC § 103***

5. Claims 6 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tokunaga.

The piece of porous material being a sphere is an obvious matter of design choice since such a modification would have involved a mere change in the shape of a component which is generally recognized as being within the level of ordinary skill in the art. The method steps recited in claims 35-37 are obvious matters of user preferences.

6. Claims 7, 8, 32, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tokunaga in view of Muhmel et al. (DE 197 53 956).

Muhmel et al. teach a scent cartridge comprising ceramic which contains sintered aluminum oxide. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Smith by replacing the porous material with a porous material containing sintered aluminum oxide as taught by Muhmel et al. since Muhmel et al. teaches that such arrangements provide for an inexpensive and easily manufactured device.

***Allowable Subject Matter***

7. Claims 2, 3, 11, 22, and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 12-30, 38, and 39 are allowed.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Davis D. Hwu whose telephone number is 571-272-4904. The examiner can normally be reached on 8:00-4:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on 571-272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Davis Hwu

  
**DAVIS HWU**  
**PRIMARY EXAMINER**